

**FILED**

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Clerk, U.S. District Court  
District Of Montana  
Missoula

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**ATTORNEY FOR PLAINTIFF  
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**KEVIN PATRICK SMITH,**

**Defendant.**

**CR 23- 15 -M- DLC**

**INDICTMENT**

**THREATS TO INJURE AND MURDER  
A UNITED STATES SENATOR  
(Counts 1 and 2)  
Title 18 U.S.C. § 115(a)(1)(B), (b)(4)  
(Penalty for Threat to Murder: Ten years  
of imprisonment, \$250,000 fine, and three  
years of supervised release)  
(Penalty for Threat to Assault: Six years  
of imprisonment, \$250,000 fine, and three  
years of supervised release)**

**THE GRAND JURY CHARGES:**

At all times relevant to the indictment:

1. Senator Jon Tester is a United States official, who is a Member of Congress, as defined in 18 U.S.C. § 115(c)(4).

2. On January 30, 2023, the defendant, KEVIN PATRICK SMITH, made numerous threatening calls to Senator Tester by phone, leaving voicemails at Senator Tester's office in Kalispell, Montana. In one instance, SMITH stated:

There is nothing I want more than to have you stand toe to toe with me. You stand toe to toe with me. I rip your head off. You die. You stand in a situation where it is physical between you and me. You die.

....

I will never stop. . . . And I would love to destroy you and rip your fucking head from your shoulders. That is no problem. Call that a threat. Send the FBI.

SMITH also left a message for Senator Tester that said:

I would love to fucking kill you. I would love to see your FBI at my door. I would love to see something in the news.

SMITH acknowledged in the recording that he threatened Senator Tester and such threats were "on purpose."

3. On February 1, 2023, the FBI contacted the defendant, KEVIN PATRICK SMITH, and instructed him not to threaten physical violence toward Senator Tester.

4. On February 10, 2023, the defendant, KEVIN PATRICK SMITH, again called Senator Tester, stating in one voice message, "I want you to understand. If I ever pull my trigger, I know what dies." In another voicemail received on the same date, SMITH stated:

No one with any understanding of anything pulls the trigger. Unless they know what they're shooting at. I guaran-goddamn-tee you. My

trigger doesn't get pulled until I know what I'm shooting at. And when I know what I'm shooting at, and I've decided its dead, it gets pulled. And there's no if ands or buts about it. And there's no coming back from that.

In another voicemail, SMITH stated, "Don't shoot shit unless you know what it is. I know who you are." SMITH also stated, "It is important for you to understand that I won't live under your rule. . . . If it becomes time that I die, I'd take a significant number with me."

### COUNT 1

That on or about January 30, 2023, at Kalispell, within Flathead County, in the State and District of Montana, the defendant, KEVIN PATRICK SMITH, threatened to assault and murder a United States official, specifically U.S. Senator Jon Tester, with the intent to impede, intimidate, and interfere with such official while engaged in, and with intent to retaliate against such official on account of, the performance of his official duties, in violation of 18 U.S.C. § 115(a)(1)(B), (b)(4).

### COUNT 2

That on or about February 10, 2023, at Kalispell, within Flathead County, in the State and District of Montana, the defendant, KEVIN PATRICK SMITH, threatened to assault and murder a United States official, specifically U.S. Senator Jon Tester, with the intent to impede, intimidate, and interfere with such official

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while engaged in, and with intent to retaliate against such official on account of, the performance of his official duties, in violation of 18 U.S.C. § 115(a)(1)(B), (b)(4).

A TRUE BILL.

Foreperson signature redacted. Original document filed under seal.

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FOREPERSON

  
\_\_\_\_\_  
TIMOTHY J. RACICOT

First Assistant United States Attorney

Attorney for the United States, Acting under Authority Conferred by 28 U.S.C. § 515

  
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CYNDEE L. PETERSON  
Criminal Chief Assistant U.S. Attorney